

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:14cr00016

DANIEL LAMONT MATHIS, et al.

**DEFENDANT'S MOTION TO DISMISS**  
**COUNTS THIRTY AND THIRTY-ONE OF THE**  
**FIRST SUPERSEDING INDICTMENT**  
**FOR FAILURE TO STATE AN OFFENSE**

Defendant Daniel Lamont Mathis moves the court under Federal Rule of Criminal Procedure 12(b)(3)(B) and under the Fifth Amendment to the United States Constitution to dismiss Counts Thirty and Thirty-One of the First Superseding Indictment for the following reasons:

1. Count Thirty of the First Superseding Indictment charges that defendants Daniel Lamont Mathis, Shantai Monique Shelton, Mersadies Shelton and Kewli Uhuru, as principals or as aiders and abettors, committed the offense of witness tampering, in violation of 18 U.S.C. §1512(a)(1)(C).
2. More specifically, Count Thirty alleges that these defendants committed this offense, as principals or aiders and abettors, by killing Kevin Quick with the intent to prevent him from communicating to law enforcement information relating to the commission of a federal offense, to-wit, car-jacking, in violation of 18 U.S.C. §2119. The indictment (Doc. 221, pp. 40-41) reads:

The Grand Jury further charges that:

1. On or between January 31, 2014 and February 1, 2014, in the Western District of Virginia, DANIEL LAMONT MATHIS a/k/a "Gunna," D-Man," and "Mooch," SHANTAI MONIQUE SHELTON, a/k/a "Tai," "Lady Blaze," and "Boss Lady," MERSADIES LACHELLE SHELTON, a/k/a "Lady Gunns," and KWELI UHURU a/k/a "Travis Leon Bell," "K Gunns," "Babi," and "Black Wolf," did as principals or as aiders and abettors, kill Kevin Quick, with the intent to prevent the communication by Kevin Quick to a law enforcement officer information relating to the commission of or possible commission of a federal offense, to-wit: carjacking, in violation of Title 18, United States Code, Section 2119.

2. All in violation of Title 18, United States Code, Sections 2 and 1512(a)(1)(C).

3. The witness tampering statute, 18 USC 1512(a)(1)(C), makes it a crime to kill another person with intent to

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings.

4. Count Thirty is defective inasmuch as it fails to state an offense because it does not allege the necessary element that Quick was killed to prevent him from communicating information relation to the commission of a federal offense to a law enforcement officer *of the United States*. Rather, Count Thirty charges that the defendants killed Quick with “the intent to prevent the communication by Kevin Quick to a law enforcement officer information relating to the commission of or possible commission of a federal offense. . . .” To be

legally sufficient on its face, an indictment must contain “all of the essential elements of the offense charged.. .” *United States v. Kingrea*, 573 F.3d 186 (4<sup>th</sup> Cir. 2009).

5. In order to obtain a conviction under this statute, the government must prove “(1) a killing or attempted killing, (2) committed with a particular intent, namely, an intent (a) to ‘prevent’ a ‘communication’ (b) about ‘the commission or possible commission of a Federal offense’ (c) to a federal ‘law enforcement officer or judge.’” *Fowler v. United States*, 131 S.Ct. 2045, 2049 (2011).

6. Communication to a “generic” law enforcement officer is insufficient under this statute, as is proof that “it was reasonably possible that at least one of the communications that the murder . . . was intended to prevent would have been with a federal law enforcement officer.” *Fowler* at 2051-2052. Instead, the government must prove a “reasonable likelihood” that had the victim not been killed he would have communicated with a federal law enforcement officer about a federal offense. *Fowler* at 2052.

7. Count Thirty-One of the First Superseding Indictment charges that defendants Daniel Lamont Mathis, Shantai Monique Shelton, Mersadies Shelton and Kewli Uhuru, as principals or as aiders and abettors, committed the offense of carrying, using, brandishing and discharging a firearm causing death during the

witness tampering offense charged in Count Thirty, in violation of 18 U.S.C. § 924(c)(1)(A)(iii).

8. Count Thirty-One is defective because a defendant can be prosecuted under 18 U.S.C. § 924(c)(1)(A)(iii) only if the alleged underlying crime of violence can be prosecuted under federal law. Since Count Thirty fails to state a federal offense, Count Thirty-One must be dismissed as well.

9. These defects cannot be corrected by amendment or by jury instruction. *United States v. Kingrea*, 573 F.3d at 194.

WHEREFORE, your defendant prays that the court dismiss Count Thirty and Count Thirty-One of the first superseding indictment.

Respectfully submitted,  
DANIEL L. MATHIS  
By Counsel

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## **CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: counsel of record; and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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